



**The Comptroller General
of the United States**

Washington, D.C. 20548

Lunter

Decision

Matter of: The Wollongong Group
File: B-224531
Date: December 18, 1986

DIGEST

1. Protest is dismissed where record shows that protester, as third low offeror, would not be in line for award even if the protest were sustained.
2. Protest of award to low offeror filed by firm that manufacturers products that might be supplied by the second low offeror is dismissed, since only an actual or prospective offeror is an interested party eligible to maintain a protest under General Accounting Office's Bid Protest Regulations.

DECISION

The Wollongong Group protests the award of a fixed-price contract to Internet Systems Corporation/Advanced Computer Communications (Internet/ACC) under request for proposals (RFP) No. DAAD07-86-R-0171, issued by the Department of the Army for an integrated hardware and software network to be used on the Defense Data Network computer system located at White Sands Missile Range, New Mexico. We dismiss the protest.

The RFP provided that award would be made to the responsible offeror submitting the lowest priced technically acceptable offer. The solicitation also cautioned offerors that award might be made on the basis of initial proposals. At the closing date, the Army received three proposals in response to the RFP, all of which were found to be technically acceptable. Internet/ACC's price of \$102,254 was the lowest, and Wollongong's price of \$140,000 was the highest. The Army subsequently decided to make award without discussions.

The proposal submitted by Internet/ACC contained the name and address of each corporation on the Standard Form 33, Solicitation, Offer and Award. Also, the cover letter to the proposal on Internet stationery stated that an offer was being submitted "jointly by ACC and Internet." Because the

Vice President for Marketing at Internet apparently had signed for both corporations, the Army requested the companies to provide documentation showing that one individual had the right to bind both of them so that the agency could have one point of contact during contract administration. The Army further requested in accordance with Federal Acquisition Regulation, 48 C.F.R. § 4.102(d) (1984), that both Internet and ACC submit a certificate that each was authorized to participate in a joint venture. After receiving a letter from ACC's East Coast Regional Manager stating that Internet's Vice President for Marketing had the right to bind ACC on the contract, and after receiving certificates from the president of Internet and the corporate secretary of ACC that each company authorized a joint venture, the Army awarded the contract to Internet/ACC. Both companies signed the award document.

Wollongong contends that notwithstanding the Army's verification, no joint venture for the contract work exists between Internet and ACC. Wollongong alleges that it has contacted ACC directly and that ACC has stated that it would not agree to form a joint venture with Internet and would not agree to be liable jointly with Internet for performance under the awarded contract.

To be considered under our Bid Protest Regulations, a protest must be filed by an "interested party," defined in our Bid Protest Regulations as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a) (1986). In determining whether a protester is sufficiently interested, we examine the extent to which there exists a direct relationship between the questions raised and the party's asserted interest and the degree to which that interest is established. In general, a party will not be deemed interested where it would not be in line for award even if its protest were sustained. Zinger Construction Co. Inc., B-220203, Oct. 30, 1985, 85-2 C.P.D. ¶ 493. Wollongong, the third low offeror, therefore is not eligible under our regulations as interested party to maintain the protest against the award to Internet/ACC's since, even if we sustained the protest, Wollongong would not be in line for award. Gracon Corp., B-219663, Oct. 22, 1985, 85-2 C.P.D. ¶ 437.

Wollongong argues that it should be considered an interested party because the second low offeror is a licensed distributor of Wollongong's computer products. However, we have held specifically that an interested party must be an actual or prospective bidder or offeror and that a protester's

interest as a manufacturer of products to be supplied by bidders or offerors is not sufficient for the protester to be considered an interested party under our regulations. ADB-ALNACO, Inc., 64 Comp. Gen. 577 (1985), 85-1 C.P.D. ¶ 633.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', written over a horizontal line.

Robert M. Strong
Deputy Associate
General Counsel